



**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[EPA-R05-RCRA-2017-0381; FRL-9974-25-Region 5]**

**Ohio: Final Authorization of State Hazardous Waste Management Program Revision.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is granting the State of Ohio Final Authorization of the requested changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as set forth below. The Agency published a proposed rule on September 15, 2017 and provided opportunity for public comment. EPA received no comments. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization.

**DATES:** The final authorization is effective on *[insert date of publication in the Federal Register]*.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R05-RCRA-2017-0381. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some of the information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy. You may view and copy Ohio's application from 9 a.m. to 4 p.m. at the following

addresses: U.S. EPA Region 5, LR-17J, 77 West Jackson Boulevard, Chicago, Illinois 60604, contact: Gary Westefer (312) 886-7450; or Ohio Environmental Protection Agency, Lazarus Government Center, 50 West Town Street, Suite 700, Columbus, Ohio, contact: Katherine (Kit) Arthur (614) 644-2932.

**FOR FURTHER INFORMATION CONTACT:** Gary Westefer, Ohio Regulatory Specialist, U.S. EPA Region 5, LR-17J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7450, e-mail *westefer.gary@epa.gov*.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Why Are Revisions to State Programs Necessary?**

States which have received final authorization from EPA under RCRA Section 3006(b) of RCRA, 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and request EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279.

##### **B. What Decisions Have We Made in This Rule?**

We conclude that Ohio's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Ohio

final authorization to operate its hazardous waste program with the changes described in the authorization application. Ohio will have responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Ohio, including issuing permits, until the state is granted authorization to do so.

### **C. What is the Effect of This Final Rule?**

This final rule requires all facilities in Ohio that are subject to RCRA to comply with the newly-authorized state requirements instead of the equivalent Federal requirements. Ohio has enforcement responsibilities under its state hazardous waste program for RCRA violations, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include among others, authority for EPA to:

1. Conduct inspections which may include but are not limited to requiring monitoring, tests, analyses and/or reports;
1. Enforce RCRA requirements which may include but are not limited to suspending, terminating, modifying and/or revoking permits; and
3. Take enforcement actions regardless of whether the state has taken its own actions.

The action to approve these revisions will not impose additional requirements on the regulated community because the regulations for which Ohio is requesting authorization are already effective under state law, and will not be changed by the act of authorization.

**D. Proposed Rule**

On September 15, 2017 (82 FR 43316), EPA proposed to authorize these changes to Ohio's hazardous waste program and opened the decision to public comment. The Agency received no comments on this proposal. EPA has determined that Ohio's application satisfies the requirements for authorization set forth in RCRA Section 3006(b) and 40 CFR part 271.

**E. What RCRA Authorization has EPA Previously Granted Ohio to Implement?**

Ohio initially received final authorization on June 28, 1989, effective June 30, 1989 (54 FR 27170, June 28, 1989) to implement the RCRA hazardous waste management program. Subsequently the EPA granted authorization for changes to the Ohio program effective June 7, 1991 (56 FR 14203, April 8, 1991) as corrected June 19, 1991, effective August 19, 1991 (56 FR 28088); effective September 25, 1995 (60 FR 38502, July 27, 1995); effective December 23, 1996 (61 FR 54950, October 23, 1996); effective January 24, 2003 (68 FR 3429, January 24, 2003); effective January 20, 2006, (71 FR 3220, January 20, 2006); effective October 29, 2007, (72 FR 61063, October 29, 2007), and effective March 19, 2012 (77 FR 25966, March 19, 2012).

**F. What Changes Are We Proposing with Today's Action?**

On June 13, 2017, Ohio submitted a final program revision application, seeking authorization of changes in accordance with 40 CFR 271.21. We have determined that Ohio's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final

Authorization. Therefore, we are granting Ohio Final Authorization for the following program changes (a table with the complete state analogues is provided in the September 15, 2017 proposed rule):

Deferral of LDR Phase IV Standards for PCB's as a Constituent Subject to Treatment in Soil, Checklist 190, December 26, 2000, 65 FR 81373.

Zinc Fertilizers Made from Recycled Hazardous Secondary Materials, Checklist 200, July 24, 2002, 67 FR 48393.

Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium, Mercury, and Silver Containing Batteries, Checklist 201, October 7, 2002, 67 FR 62617.

Hazardous Waste Management System: Modification of the Hazardous Waste Program: Mercury Containing Equipment, Checklist 209, August 5, 2005, 70 FR 45507.

Resource Conservation and Recovery Act Burden Reduction Initiative, Checklist 213, April 4, 2006, 71 FR 16861.

Hazardous Waste Management System: Modification of the Hazardous Waste Program: Cathode Ray Tubes, Checklist 215, July 28, 2006, 71 FR 42927.

Regulation of Oil-Bearing Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas, Checklist 216, January 2, 2008, 73 FR 57.

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments, Checklist 217, April 8, 2008, 73 FR 18970.

Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Amendment to Hazardous Waste Code F 019, Checklist 218, June 4, 2008, 73 FR 31756.

Standards Applicable to Generators of Hazardous Waste: Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated with Colleges and Universities, Checklist 220, December 1, 2008, 73 FR 72991.

Equivalent State Initiated Changes:

State Initiated Change: Manifest Rules, Ohio rules amended per request of an EPA memorandum dated May 14, 2007, regarding manifest rule errors.

State Initiated Change: Performance Track, Ohio rules amended per an EPA memorandum dated March 16, 2009, that ended the Performance Track Program.

State Initiated Change: Hazardous Waste and Used Oil: Corrections to 40 CFR, Hazardous Waste and Used Oil: Corrections to 40 CFR (Additional corrections from Checklist 214).

State Initiated Changes: Ohio Rules Reviewed per Ohio Revised Code 119.032, State Initiated Changes (housekeeping).

#### **G. Which Revised State Rules Are Different from the Federal Rules?**

Ohio has excluded the non-delegable federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements.

Only recently receiving the statutory authority, Ohio has not adopted the rules for Subparts AA, BB and CC of 40 CFR Part 264. Until Ohio is authorized for such rules, the federal rules at 40 CFR Part 264 subpart AA, BB and CC and Part 265 subpart AA, BB and CC, which are promulgated under HSWA, still apply in Ohio. On July 14, 2006, U.S. EPA issued a rule making several hundred corrections to errors that had appeared in the *Code of Federal Regulations* (checklist 214). Ohio broke these corrections into several rule makings. Ohio was authorized for several of these rule corrections on March 19, 2012. In addition, a number of the corrections had already been made in the state rules. This action authorizes several more of the corrections that appear in the EPA rulemaking of July 14, 2006.

#### **Broader in Scope Rules:**

Ohio recently promulgated regulations adding Antifreeze, Aerosol Cans and Paint Wastes to its list of Universal Wastes and now regulates such wastes under state law. Ohio EPA's application did not include these additions, however, and EPA does not address them in this action.

#### **H. Who Handles Permits After the Final Authorization Takes Effect?**

Ohio will issue permits for the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issues prior to the effective date of the proposed authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of the authorization. EPA will continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized.

#### **I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Ohio?**

Ohio is not authorized to carry out its hazardous waste program in "Indian Country," as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Ohio;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, this action has no effect on Indian Country. EPA retains the authority to implement and administer the RCRA program on these lands.

#### **J. What Is Codification and Is EPA Codifying Ohio's Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. Ohio's authorized rules, up to and including those revised June 7, 1991, have previously been codified through the incorporation-by-reference effective February 4, 1992 (57 FR 4162). We reserve the amendment of 40 CFR part 272, subpart KK for the codification of Ohio's program changes until a later date.

#### **L. Statutory and Executive Order Reviews**

This final rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by state law (see Supplementary Information, Section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

*1. Executive Order 18266: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review*

The Office of Management and Budget has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821 January 21, 2011).

*2. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*3. Regulatory Flexibility Act*

This rule authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by state law. Accordingly, I certify that this rule

will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### *4. Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

#### *5. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this proposed rule because it will not have federalism implications (*i.e.*, substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government).

#### *6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes).

#### *7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

#### *8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

*9. National Technology Transfer Advancement Act*

EPA approves state programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this proposed rule.

*10. Executive Order 12988*

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

*11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings*

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of these rules in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

*12. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*

Because this rulemaking proposes authorization of pre-existing state rules and imposes no additional requirements beyond those imposed by state law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

### *13. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's final authorization of Ohio's revised hazardous program under RCRA are exempted under Executive Order 12866.

### *14. Congressional Review Act*

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 et seq) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the *Federal Register*. A major rule cannot take effect until sixty (60) days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final authorization will be effective *[insert date of publication in the Federal Register]*.

### **List of Subjects in 40 CFR Part 271**

Environmental protection; Administrative practice and procedure; Confidential business information; Hazardous materials transportation; Hazardous waste; Indians-lands; Intergovernmental relations; Penalties; Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 23, 2018.

Cathy Stepp  
Regional Administrator, Region 5

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